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May 16, 2013

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VIA HAND DELIVERY

FILED/ACCEPTED

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

MAY 16 2013

Federal Communications Commission
Office of the Secretary

**Re: WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, GN DOCKET NO. 09-51, CC DOCKET NOS. 01-92, 96-45, WT DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Notice of Ex Parte**

Dear Ms. Dortch:

On behalf of Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), pursuant to the procedures outlined in the Third Protective Order adopted in the above referenced proceedings, please find enclosed an original and one copy of AEE and WCC’s Public version of their Notice of Ex Parte filed in the aforementioned dockets. The [] symbols denote Confidential Information. A Confidential version is also being filed separately with the Secretary’s Office. Furthermore, additional copies of the Confidential version are being delivered to the Wireline Competition Bureau.

Should you have any questions concerning the foregoing request, please contact the undersigned.

Sincerely,



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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
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Re: **Notice of Ex Parte**
WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45,
GN Docket No. 09-51, WT Docket No. 10-208
Petitions for Waiver – Adak Eagle Enterprises (filed May 22, 2012) and Windy
City Cellular (filed April 3, 2012)

Dear Ms. Dortch:

On May 16, 2013, Larry Mayes, Chief Executive Officer of Adak Eagle Enterprises, LLC (“AEE”) and Windy City Cellular, LLC (“WCC”), Andilea Weaver, the companies’ Chief Operations Officer, and Monica Desai, the companies’ outside counsel, met with Commissioner Rosenworcel and Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel, regarding the Petitions for Waiver filed by AEE and WCC.¹ The discussion focused on the following points:

AEE and WCC understand that the Bureaus have specific suggestions in mind regarding the areas in which they believe it is appropriate for the companies to further cut costs. AEE and WCC emphasized that they would appreciate the opportunity to hear these ideas and work with the Bureaus to cut costs as the Bureaus deem appropriate. Ms. Desai sent an e-mail to Ruth Milkman, Chief of the Wireless Telecommunications Bureau, and Julie Veach, Chief of the Wireline Competition Bureau (copying Michael Steffen, Sue McNeil, Travis Litman, and Jane Jackson), requesting that the Bureaus discuss their cost-cutting ideas with the companies before releasing a denial of the waiver requests. Engaging in a direct and open discussion of these issues would be consistent with the Commission’s goal of conducting a fair and transparent process.

¹ See Petition for Waiver of Adak Eagle Enterprises, LLC, WC Docket No. 10-90, et al., filed May 22, 2012 (“AEE Petition”); Petition for Waiver of Windy City Cellular, LLC, WC Docket No. 10-90, et al., filed April 3, 2012 (“WCC Petition”).

As discussed in previous filings, AEE and WCC maintain the only wireline service on Adak Island, the only 911 service on the island, the most comprehensive wireless service on the island, and the only technicians on the island. As reflected in the numerous letters submitted in support of the AEE and WCC waiver requests,² the services provided by AEE and WCC are vital to the Adak community and essential for public safety on the island. Indeed, WCC provides the most comprehensive wireless coverage across the entire island, including into otherwise unserved remote areas of the island and into the sea, where residents, government researchers, public safety personnel, fishermen and contractors regularly require service.

AEE and WCC reiterated that the Commission committed to Congress and to rural America that factors such as challenging conditions, outstanding loans, recent investments, and consumers at risk of losing service would all be important considerations in the waiver process.³ Furthermore, the Commission repeatedly assured that there would not be any “flash cuts” in funding and that the Commission would work with companies on an ongoing basis to ensure a predictable process.⁴

In stark contrast, however, the staggering 84% flash-cut reduction to WCC’s funding, effective immediately and without warning – and the onerous and complicated waiver process that has now been ongoing for over a year – have been the exact opposite of the Commission’s repeated promises of a predictable, timely, and transparent process with “no flash cuts.” Allowing the USF reforms to force AEE and WCC into bankruptcy would create governmental inefficiency that would have a detrimental impact at both the federal and state levels.

Ms. Desai emphasized that Section VII(G) of the *USF/ICC Transformation Order* does not provide that a waiver request can be denied based on another company’s “commitment” to take over another company’s assets in bankruptcy, or another company’s “promise” to serve a certain area.⁵ Rather, Section VII(G) states that a carrier seeking a waiver “must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where this is no terrestrial alternative.”⁶ Section VII(G) further states that the Commission envisions granting relief where “the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities

² See AEE Petition at Attachment A; Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte and Submission of Further Supplemental Information, WC Docket No. 10-90, *et al.*, Attachment 8, dated April 12, 2013 (“AEE/WCC April 12 Ex Parte”) (Letters of Support filed by Sen. Mark Begich; Sen. Lisa Murkowski; Congressman Don Young; the City of Adak; Marine Exchange of Alaska; Aleut Corporation; Adak Community Development Corporation; Alaska Maritime National Wildlife Refuge, U.S. Department of the Interior, Fish and Wildlife Service; Icicle Seafoods, Inc.; Eastern Aleutian Tribes; National Telecommunications Cooperative Association; U.S. Geological Survey; and the Adak Police Department).

³ See Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, 3-5, dated May 14, 2013 (“AEE/WCC May 14 Ex Parte”).

⁴ See AEE/WCC May 14 Ex Parte at 3-5.

⁵ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, Section VII(G), ¶¶ 539-544 (2011) (“*USF/ICC Transformation Order*”).

⁶ *USF/ICC Transformation Order*, ¶ 540.

required for supported voice service.”⁷ AEE and WCC meet this standard. Indeed, as a result of AEE’s and WCC’s investments, the companies are able to provide service into portions of the Adak service area beyond the portion of the downtown area served by their competitor. Governmental agencies and departments, as well as residents, depend on the critical services provided by AEE and WCC beyond downtown Adak – including the U.S. Department of Interior Fish and Wildlife Service, the City of Adak, and the Adak Police Department – and would be harmed by the unavoidable disruption to these essential services.⁸ There is no terrestrial alternative available to these customers. Under Section VII(G), an unsubstantiated “commitment” or “promise” to provide service at some point in the future is not sufficient.

AEE and WCC discussed the transition path proposed in their confidential filing of May 15, 2013.⁹ As outlined in that filing, the long-term transition plan assumes several voluntary cost reductions, and provides a glide path to transition significantly closer to the monthly \$250 per line cap while allowing AEE to repay its RUS loans, which were used to invest in plant and equipment to provide service on Adak Island. Both AEE and WCC are relatively new companies, with the wireline service in place only seven (7) years, the broadband service only five (5) years, and the wireless service only four (4) years. A long-term transition timeline is consistent with the Commission’s repeated promises of a measured and predictable transition path and, in particular, Commissioner Pai’s call for predictable USF support that allows companies to adequately plan their long-term investments into the future.¹⁰

Additionally, AEE and WCC reemphasized the following information provided in their ex parte of April 12, 2013:¹¹

Information Regarding Remaining Employees.

Through the elimination of employee positions and the reallocation of duties, the companies have reduced their overall staff from 17 full-time employees (excluding the CEO and COO) down to 11 full-time positions and two part-time positions:

⁷ USF/ICC Transformation Order, ¶ 540 (emphasis added).

⁸ See AEE Petition at Attachment A and AEE/WCC April 12 Ex Parte at Attachment 8 (Letters of Support).

⁹ See Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Submission of Further Supplemental Information, WC Docket No. 10-90, *et al.*, dated May 15, 2013; AEE/WCC May 14 Ex Parte.

¹⁰ See Statement of Commissioner Ajit Pai, FCC, before the U.S. Senate Committee on Commerce, Science, and Transportation (March 12, 2013) (“Unlike the urban environment, rural carriers must carefully plan their infrastructure over a five-, ten-, or **twenty-year time scale** if they are to recover their costs ... [W]e need to think long and hard about the statutory command that universal service be ‘predictable.’”) (emphasis added).

¹¹ AEE/WCC April 12 Ex Parte at 6-10.

- 2 Technician Positions – Plant Manager (full-time) and Combination Technician (will be full-time once position is filled if the Commission allows this):

AEE and WCC have been operating with only one technician on Adak Island as a result of the USF funding cuts. AEE's technician currently is the only technician employed by any company on Adak Island able to perform the necessary maintenance to support telecommunications operations. In addition to their responsibilities to AEE and WCC, AEE's technicians also have typically received requests from other companies – including GCI – needing maintenance or repair work on the island several times each winter.

Given that much of the work performed by the technicians – such as laying fiber, installing optical network terminal boxes, climbing towers, repositioning the satellite dish, and wiring customers' homes – would be unsafe or impossible for an individual technician to perform alone, it is necessary to have two technicians on the island. AEE's CEO has been temporarily forced to perform additional duties on the island normally performed by a second technician while the companies remain under severe funding shortfalls. It is inefficient and unsustainable, however, for the companies' CEO to perform these types of duties normally performed by a technician, particularly given his numerous other duties. Because it is essential for safety reasons that AEE have more than one technician working on Adak Island, AEE has made other cuts in order to begin the hiring process to fill a second Combination Technician position. The companies, however, will not be able to sustain this critical position if sufficient funding is not restored by the time the 6-month interim relief expires in June.

- 3 Accounting Positions – Accounting Manager (full-time), Accountant (full-time), and Accounting Assistant (full-time):

- Accounting Manager: This position is critical because the employee manages the accounting department and oversees all accounting practices. In particular, the position's duties include, but are not limited to, developing and maintaining accounting practices and procedures to ensure accurate and timely financial statements, preparing monthly reports, and handling CAM allocations. This person also must meet deadlines for the preparation of the general ledger, financial reporting, and financial audit preparation, and assist with preparation of the companies' budgets and forecasting activities.
- Accountant / Payroll: This position is essential to support the Accounting Manager and the companies' accounting operations. Responsibilities include, but are not limited to, accurately maintaining AEE's accounting records and payroll as assigned by the Accounting Manager. This employee also prepares entries to general ledger accounts to include proper documentation of business transactions, codes and enters information into AEE's accounting software, maintains vendor folders for all invoices and check copies, and processes quarterly reports.
- Accounting Clerk: This position's critical responsibilities include accounting data entry and overseeing accounts payable. The Accounting Clerk also assists with accounting record-keeping and supports all aspects of the companies' accounting operations.

- 1 Mechanic (full-time):

AEE's mechanic position is essential because this employee is the only mechanic on Adak Island. Responsibilities include, but are not limited to, performing physically demanding labor such as engine and tire repair, operating heavy equipment such as cranes, graders, bulldozers, and backhoes, and performing duties such as removing snow and participating in routine maintenance.

- 1 Mechanic Assistant (full-time):

AEE hired the Mechanic Assistant in light of the upcoming retirement of AEE's mechanic – the only mechanic on Adak Island. This employee assists the mechanic with physically demanding labor, including engine and tire repair, which are unsafe or impossible for one individual to perform alone. Requiring the mechanic to perform this type of manual work without assistance presents safety risks in the event of an accident or emergency. This risk is heightened further given the severe climate conditions on Adak Island. Furthermore, absent the Mechanic Assistant position, there would be no backup to perform these essential duties if the lone mechanic were to become sick or need to leave Adak Island for any reason.

Additionally, the Mechanic Assistant has taken on the critical duties previously performed by the Facilities Maintenance Technician. As already discussed in the February 28 ex parte,¹² the Facilities Maintenance Technician performed critical duties, including maintenance and repair of all facilities including warehouses, offices and the telex. After this position was laid off due to the FCC's funding cuts, the companies' CEO and Plant Manager took on these responsibilities. Because these duties are essential to the companies' ongoing operations in a severe and unpredictable climate, AEE has reassigned these responsibilities to the Mechanic Assistant rather than rehire a separate Facilities Maintenance Technician.

The Mechanic Assistant also performs duties of an Assistant Combination Technician. Since AEE has been operating with only one technician on Adak Island, the Mechanic Assistant has taken on job duties to support the current technician in performing maintenance and repair work that would be impossible for the technician to complete alone. After the Combination Technician position is filled, the Mechanic Assistant will continue to assist the technicians with these job responsibilities.

Although the Mechanic Assistant position is critical for the companies' operations, the position would have to be eliminated if sufficient funding is not restored by the time the 6-month interim relief expires in June.

¹² See Letter from Monica Desai, Counsel, AEE and WCC, to Marlene H. Dortch, Secretary, FCC, Notice of Ex Parte, WC Docket No. 10-90, *et al.*, dated Feb. 28, 2013.

- 2 Customer Service Positions – Customer Service Supervisor (full-time); Customer Service Representative (part-time):

- Customer Service Supervisor: This position is essential because the employee manages the day-to-day operations and supervision of all areas of the customer service department. This employee's responsibilities also include, but are not limited to, intercompany billing, recordkeeping, billing and collections related to customers, accounts receivable, promotions of services, employee evaluations, and maintaining the AEE website.
- Customer Service Assistant: This position is essential to support the companies' customer service operations, including but not limited to, accurately maintaining all customer accounts for AEE, receiving all customer feedback, and ensuring that all customer needs are met. This employee processes the monthly billing of customer accounts and receives, records, attempts resolution, and dispatches service orders.

- 2 IT Positions – IT Administrator (full-time) and IT Technician (full-time):

- IT Administrator: This position performs critical duties, including but not limited to, managing and overseeing the companies' IT operations, implementing software installations, maintaining plant records, addressing all employee IT issues, and performing switch maintenance.
- IT Technician: This position is responsible for essential duties, including but not limited to, serving as the primary contact for the Internet IT helpdesk, implementing and maintaining LAN/WAN and related equipment, and providing AEE's employees with technical and computer support. This position also receives all service order requests for broadband, maintains minutes of use records for billing, and performs computer maintenance.

- 1 Administrative Assistant (full-time):

This person performs critical duties including, but not limited to, maintaining office logs and supplies, filing corporate documents, record-keeping, researching and executing purchase requests for supplies and equipment, and performing bank runs. Because it is vital that the Administrative Assistant position is filled, AEE has transitioned one of its employees from the accounting department to fill this position rather than incur additional expenses to hire another employee. Consequently, the COO has had to take on additional accounting duties previously handled by this employee, including reviewing all reconciliations and purchase orders, and performing accounting record-keeping duties.

- 1 Retail Clerk (part-time):

This person is responsible for operating WCC's retail store. She is the only retail clerk on Adak Island, and responsibilities include the sale of handsets to customers, providing customer support at the retail store, provisioning customers' cell phones by adding minutes and troubleshooting, and overseeing the free WiFi stations available for public use at the retail store. Additionally, in light of the elimination of the Facilities Maintenance Technician position, the

retail clerk also assists with cleaning the companies' facilities. As a result of the USF funding cuts, WCC's retail clerk was reduced to part-time status, and her health benefits were eliminated.

Based on their experience operating over the past six years, the companies believe that these employees are essential in maintaining quality operations, providing service to residents and governmental operations on the island, responding to customer provisioning and service issues, preparing and filing 20-30 federal, state and RUS required reports every quarter, handling vendor and customer records, fixing IT issues, keeping proper accounting records and documentation, responding to government requests for information, maintaining the valuable infrastructure on the island, keeping up with changing federal and state regulations, and being prepared to respond in emergency situations, among other duties. The companies have eliminated other positions one by one over the last year, in light of the funding cuts. If the FCC staff believes that, based on its research and experience, particular positions are extraneous, then WCC and AEE would appreciate staff telling them which positions to eliminate so that they can adjust accordingly.

Comparison of Executive Salaries and Additional Information Regarding Reductions in Salary Expenses.

AEE's and WCC's April 12 ex parte also provided additional information regarding the salary cuts implemented by AEE and WCC.¹³ From 2011 to 2012, salary expenses decreased by approximately [REDACTED]. From 2012 to current projected salaries for 2013, salaries have been reduced by approximately [REDACTED] as a result of the cost-cutting measures discussed in the February 28 ex parte, including the permanent elimination of five positions and the voluntary [REDACTED] reduction in the salaries of the companies' CEO and COO. In addition, the CEO and COO have volunteered to freeze their salaries for three years.

The April 12 ex parte also provided a chart comparing the CEO's and COO's 2012 and 2013 salaries to the salary range data provided by NTCA and the Alaska Department of Labor.¹⁴ The actual executive salary figures in the comparison chart are lower than the salary figures contained in Attachment 1 hereto because the figures in Attachment 1 include vacation payouts (on average, approximately [REDACTED] hours per year because only [REDACTED] may be carried over), as well as additional salary that is allocated to non-regulated entities. The NTCA and Alaska Department of Labor salary figures reflect only base pay. When the vacation payouts and additional salary amounts allocated to non-regulated entities are not included in the AEE/WCC executive salary figures listed in the comparison chart, the CEO's 2013 base salary is reduced to [REDACTED], and the COO's 2013 salary is reduced to [REDACTED].

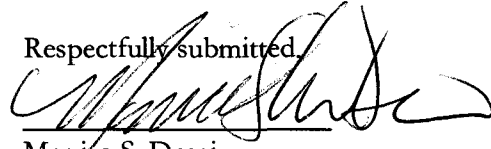
Significantly, the salaries listed for AEE and WCC executives do not reflect their entire salary history during which the CEO and COO did not take any salary for the first two years of operations. Moreover, unlike approximately [REDACTED] of other presidents/general managers and [REDACTED] of other managers/supervisors at companies surveyed by NTCA, AEE and WCC executives do not receive any cash bonuses. Additionally, it is important to note that the salary ranges provided by the Alaska Department of Labor are not specific to the telecommunications industry and reflect salary data

¹³ AEE/WCC April 12 Ex Parte at Attachments 1-2.

¹⁴ AEE/WCC April 12 Ex Parte at Attachment 2.

from non-specialized industries, as well. Taking all these factors into account, the chart demonstrates that AEE and WCC executive salaries are reasonable and in line with salaries for comparable positions.

Respectfully submitted,



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